



1 in the interests of sound judicial administration as expressed in  
2 *Colorado River Water Conservation District v. United States*, 424  
3 U.S. 800, 817 (1976), the court will stay the current proceeding  
4 until the state court has resolved its action or until further  
5 notice of the court.

6  
7 **I. Legal Standard for Colorado River Abstention**

8 In *Colorado River*, the Supreme Court noted the “virtually  
9 unflagging obligation of the federal courts to exercise the  
10 jurisdiction given them.” *Colorado River*, 424 U.S. at 817.  
11 Nonetheless, the court held that certain exceptional circumstances  
12 warrant the abstention by federal courts from the exercise of their  
13 validly conferred jurisdiction in the interests of sound judicial  
14 administration and economy. *Id.* at 817-18. The Court identified  
15 four factors a district court should weigh to determine when those  
16 circumstances are present: (1) which court asserted jurisdiction  
17 over any property in the action; (2) the inconvenience of the  
18 federal forum versus the state forum; (3) the desirability of  
19 avoiding piecemeal litigation; and (4) the order of filing for the  
20 state and federal actions. *Id.* at 818-19. The Court subsequently  
21 added two more considerations: (5) whether federal or state law  
22 controls the decision on the merits; and (6) whether the state  
23 court can adequately protect the rights of the parties. *Moses H.*  
24 *Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 23-24, 26-27  
25 (1983). However, the Court stated that these factors are not to be  
26 used as a checklist, but “applied in a pragmatic, flexible manner  
27 with a view to the realities of the case at hand.” *Id.* at 21. In  
28 addition, a court may consider whether exercising jurisdiction

1 would promote forum shopping, although this factor alone would  
2 clearly be inadequate. *Fed. Dep. Ins. Corp. v. Nichols*, 885 F.2d  
3 633, 638 (9th Cir. 1989).

## 4 5 **II. Application of Legal Standard**

6 As a preliminary matter, the court concludes that the claims  
7 at issue in the state action and those here are sufficiently  
8 similar to allow for abstention under *Colorado River*. See *Holder*  
9 *v. Holder*, 305 F.3d 854, 867 (9th Cir. 2002) ("Exact parallelism is  
10 not required; it is enough if the two proceedings are substantially  
11 similar") (citations omitted). The court finds that the claims made  
12 in Clark County district court and those here meet this requirement  
13 for the following reasons: First, while more numerous in the  
14 defendants' state court complaint, the claims presented there  
15 include those presented here. Specifically, in both complaints  
16 breach of the asset purchase and consulting agreements that  
17 governed the sale of PRIDE, as well as fraudulent and negligent  
18 misrepresentation with respect to those agreements, constitute the  
19 gravamen of the allegations. Second, with few exceptions, the  
20 parties of both cases are identical. The defendant Pride FC  
21 Worldwide entities in the federal complaint are the same plaintiff  
22 entities in the state action except for Pride FC Worldwide, GK,  
23 which was voluntarily dismissed. The plaintiffs also joined the  
24 Fertittas individually as defendants. The defendants in the state  
25 action are the same as the plaintiffs in the federal action, with  
26 the exception of two companies named Dream Stage Entertainment  
27 Inc., one a Nevada corporation, and the other Japanese. Finally,  
28 the complaints in both the state and federal actions seek similar

1 damages. The parallelism requirement for *Colorado River* abstention  
2 is therefore met.

3 Turning to the seven factors articulated in *Colorado River* and  
4 subsequent cases, the court concludes that on balance they favor  
5 abstention. The first and second prongs are unavailing. There is  
6 no res at issue that would favor one court, and neither party has  
7 expressed any concern for the inconvenience of the federal forum.

8 The third and fourth prong of the *Colorado River* test,  
9 however, favor abstention. As discussed above, the claims  
10 presented in the federal and state actions are substantially  
11 similar, and pursuit of the same claims in both jurisdictions risks  
12 producing inconsistent results and the duplication of efforts by  
13 the parties. The defendants filed their state action on February  
14 1, 2008, two months prior to the date the complaint was filed in  
15 this action. Deference should be given to the court that first  
16 retains jurisdiction, particularly when the second suit is in  
17 federal court on grounds of diversity with no federal claims. See  
18 *AmerisourceBergen Corp. v. Roden*, 495 F.3d 1143, 1155-56 (9th Cir.  
19 2007) (J. Ferguson, concurring).

20 There is some disagreement between the parties as to whether  
21 the fifth prong favors abstention. This action is fundamentally a  
22 contract dispute and therefore governed by state law. Furthermore,  
23 Nevada gaming requirements appear to undergird several of the  
24 provisions in the contracts. Defendants contend that a material  
25 condition of their purchase of the PRIDE brand was that the  
26 plaintiffs submit to appropriate background checks and drug tests  
27 to ensure compliance with the rules and regulations of the Nevada  
28 Gaming Commission and the National Indian Gaming Commission. (Def.

1 Mot'n to Dismiss at 18). Plaintiffs respond that the Nevada state  
2 court would be unable to resolve any specific gaming license  
3 problems, as that is a function left exclusively to the Nevada  
4 Gaming Commission. (Pl. Oppo. at 7). Neither party has submitted  
5 copies of the contracts so the court is unable to specifically  
6 address this issue. Nevertheless, the plaintiffs' allegations in  
7 the complaint make clear that gaming license issues are intertwined  
8 with the claims before both courts. Therefore this factor weighs  
9 in favor of abstention to allow the state court to resolve any  
10 questions of state law that may be implicated in the contract  
11 provisions.

12 Neither party contends that the state court would be unable to  
13 protect the rights of the parties, and indeed, as stated above, the  
14 court concludes that the state court may be a more appropriate  
15 venue to resolve any issues concerning state-created rules. The  
16 sixth prong therefore also weighs in favor of abstention.

17 Under the seventh and final prong, the court must consider  
18 whether exercising jurisdiction would promote forum shopping. The  
19 court is mindful of the defendants' argument that plaintiffs are  
20 engaged in forum shopping in an effort to gain some tactical  
21 advantage and delay judgment in the state case. (Def. Supp. to  
22 Mot'n to Dismiss at 2). Defendants point to the fact that the  
23 plaintiffs filed this federal action only two months after the  
24 complaint in the state action was filed, and that they excluded  
25 certain entities named in the state action to ensure complete  
26 diversity in this court. For purposes of this motion the court  
27 does not need to determine the plaintiffs' motives for the federal  
28 filing. It is sufficient to conclude here that the state forum

1 provides an appropriate venue for the adjudication of the issues  
2 presented in this action, and that in the interests of judicial  
3 economy and to avoid duplicative litigation, the court should stay  
4 the current proceedings.

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6 **III. Conclusion**

7 For the foregoing reasons, the motion to dismiss is denied.  
8 The motion to stay this action is granted. Either party may  
9 petition the court to reopen this action for good cause. The clerk  
10 of the court shall administratively close this case until further  
11 order of the court.

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13 **IT IS SO ORDERED.**

14 DATED: This 28th day of August, 2008.

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16 UNITED STATES DISTRICT JUDGE  
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